



## CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 8, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0269

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 – Using Force, 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

Named Employee #1 (NE#1) and Witness Officers #1, #2, and #3 (WO#1, WO#2, and WO#3) responded to a domestic violence (DV) incident. NE#1 and the witness officers physically struggled to arrest the Complainant. The Complainant alleged NE#1 used excessive force when NE#1 punched the Complainant's face three times, breaking his nose.

### **ADMINISTRATIVE NOTE:**

On October 24, 2023, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

### **SUMMARY OF INVESTIGATION:**

OPA received a complaint and opened an investigation. During its investigation, OPA reviewed the OPA complaint, computer-aided dispatch (CAD) call report, body-worn video (BWV), incident and supplement reports, and Force Investigation Team (FIT) interviews. OPA also interviewed NE#1.

#### **A. OPA Complaint**

On June 19, 2023, Witness Supervisor #1 (WS#1)—a lieutenant—submitted a Blue Team complaint to OPA on behalf of the Complainant. WS#1 wrote that officers were dispatched to a DV incident and had probable cause to arrest the Complainant. WS#1 wrote that the Complainant was noncompliant and resisted arrest by “pulling away and twisting/turning his body while trying to leave via apartment stairwell.” WS#1 wrote that the Complainant was treated at Harborview Medical Center (HMC) for a broken nose and told a detective that NE#1 punched him three times. WS#1 wrote that the Complainant believed the second and third punch were unnecessary because, he stated, his hands were held behind his back.



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## **B. Computer-Aided Dispatch (CAD) Call Report**

On June 19, 2023, at 1:30 PM, CAD call remarks noted, "2ND HAND INFO, 2 MIN AGO [REPORTING PARTY] GOT PHONE CALL FROM FRIEND SAYING [EX-BOYFRIEND] WAS INSIDE UNIT REFUSING TO LEAVE, [NO CONTACT ORDER] IN PLACE, NO [WEAPONS] MENTIONED."

## **C. Body-Worn Video (BWV) and Incident and Supplement Reports**

NE#1 and the witness officers responded to an apartment with their BWV activated. Collectively, BWV captured the following events on June 19, 2023.

NE#1 and the witness officers approached the Complainant's ex-girlfriend's (Community Member #1 or CM#1) apartment. NE#1 had his gun drawn. WO#1 pressed his ear against the wall for a few seconds, knocked, and announced, "Seattle Police. Doing a welfare check." CM#1's son opened the door. CM#1 exited while crying. WO#1 asked CM#1, "Is he inside?"<sup>1</sup> WO#1 shouted, "Hey, [Complainant], come outside with your hands up, please." The Complainant exited CM#1's apartment with his hands briefly raised. WO#1 and NE#1 grabbed the Complainant's left arm while WO#2 and WO#3 grabbed the Complainant's right arm. WO#3 said, "Don't fight." The Complainant walked towards the stairwell exit, which was across CM#1's apartment. The Complainant said, "I didn't do anything," then opened the stairwell door.

WO#2 and WO#3 attempted to prevent the Complainant from going down the stairs. The Complainant descended to the landing when WO#2 followed and "bear hugged" the Complainant from behind. The Complainant repeatedly shouted, "I didn't do anything!" An officer said, "Stop fighting or you will be Tased." Officers maneuvered the Complainant to the ground. The Complainant resisted and shouted, "No! I can't go to jail!" The right side of the Complainant's body was on the ground while his left hand held a handrail. NE#1 held the Complainant's chin up and punched his face using his right fist. An officer said, "Stop fighting." The Complainant said, "I can't. I can't." NE#1 punched the Complainant's face two more times using his right fist. An officer said, "Stop fighting or you will be Tased," and a Taser arc could be heard.

The Complainant sat up on the landing and bled from his nose. WO#2 "bear hugged" the Complainant from behind again. An officer repeatedly ordered the Complainant to put his hands behind his back. The Complainant refused and repeatedly said, "I can't go." WO#1 stood in front of the Complainant with his Taser aimed at him and deployed two Taser arc warnings. The Complainant appeared to stop struggling but refused to put his hands behind his back, causing WO#1 to deploy his Taser. The Complainant fell backward. WO#2 handcuffed the Complainant.

Seattle Fire Department (SFD) personnel medically evaluated the Complainant. The Complainant was transported to HMC, then transported to the King County Jail.

Witness Officer #4 (WO#4)—the primary officer—wrote an incident report. WO#4 wrote that there were two active no-contact orders requiring the Complainant to stay 1,000 feet away from CM#1 and prohibiting him from communicating with her. WO#4 wrote that officers had probable cause to arrest the Complainant for residential

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<sup>1</sup> WO#1 wrote a supplement report documenting that CM#1 "noded yes" to his question.



burglary, assault in the third degree, and violating the no-contact orders. WO#1, WO#2, WO#3 wrote supplement reports consistent with the events captured on BWV.

#### **D. Force Investigation Team (FIT) Interviews**

After it was determined that NE#1 broke the Complainant's nose, FIT classified NE#1's use of force as Type III<sup>2</sup> and opened an investigation. As part of its investigation, FIT interviewed the Complainant, NE#1, and the witness officers.

##### **1. The Complainant**

FIT interviewed the Complainant at HMC on June 19, 2023. The Complainant said he tried to escape when officers attempted to arrest him. The Complainant said he flailed around but did not swing, kick, bite, or scratch because he did not want to hurt anyone. The Complainant said he would understand if officers Tased him, but he believed NE#1 used excessive force. The Complainant said, "I think the only excessive force was just the, when [NE#1] punched me in the face, cause I, my hands were already behind my back and now, now my nose is broken." The Complainant described NE#1's punches as an "uppercut." The Complainant said blood gushed out of his nose and there was blood all over him, causing him to panic. The Complainant said he could not hurt anyone because he was "already subdued." The Complainant believed NE#1 punched him because NE#1 was upset, irritated, or impatient. The Complainant said he did not want to go to jail, which was why he did not put his hands behind his back when officers "jumped" him. The Complainant acknowledged he did not comply with officers' orders but said he complied after he was Tased.

##### **2. Named Employee #1 (NE#1)**

FIT interviewed NE#1 on June 19, 2023. NE#1 said any interaction with the Complainant could turn violent because the Complainant was potentially violent with CM#1 and another officer mentioned that the Complainant fought with officers before. NE#1 said the Complainant exited CM#1's apartment and was compliant for a few seconds, then pulled all officers onto the stairwell. NE#1 described the Complainant as a large, muscular male stronger than any officer present. NE#1 said that, during the struggle, NE#1 "got the distinct feeling that we were being overpowered by this guy and that he was gonna pull us down the stairs, you know, potentially leading to, uh, to him becoming injured, us becoming injured." NE#1 said:

*Uh, I made the decision to punch him in the face, uh, with the intention of, you know, breaking down structure and gaining compliance. Uh, it was not effective. I punched him two more times. It was still not effective. Uh, he pulled us to the stop of the, or the top of the next flight of stairs. Um, we kind of had like pause where it's like he, he kind of stopped fighting, stopped pulling, and we stopped, too. Words were said to him, but I don't, I don't recall what, uh, and then it all started up again. Uh, [WO#1] deployed a Taser, and we got him into cuffs.*

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<sup>2</sup> Type III is force that causes, or is reasonably expected to cause, great bodily harm, substantial bodily harm, loss of consciousness, or death. SPD Policy 8.050. Type III force includes, among other things, a broken bone, potentially serious head injury, permanent disfigurement or loss of the function of any bodily part or organ, or incidents where the suspect is admitted to the hospital due to the force. See SPD Policy 8.400-POL-1.



NE#1 said his first punch “dazed [the Complainant] for a second,” then the Complainant continued resisting. NE#1 said he punched the Complainant two more times, which were ineffective because the Complainant continued resisting. NE#1 said:

*So, we were, we were a few seconds in, I can't say how long at that point of struggling with this guy, um, as stated, I got the impression that he was stronger than we were and extremely determined to get away from us. I believed that, you know, if, if the fight had gone on, it was gonna end up, one of us was gonna get injured, like we were in a stairwell, we're at the top of the, the landing, . . . and he was trying to pull to the other side. And I remember thinking like, we're gonna fall down the stairs, like we're all gonna tumble down and it's gonna end up with a couple of us, uh, getting hurt, him getting hurt by going down the stairs. Um, I, I saw an opportunity, maybe not the right word, but opportunity to apply force in a way that I thought would get compliance, and the easiest thing I had at that moment was to strike him in the face.*

NE#1 said he carried a Taser, a baton, and an oleoresin capsicum (OC) spray. NE#1 said he did not consider deploying any of these less lethal tools because another officer already had his Taser out and threatened to deploy it. NE#1 stated he could have struck another officer if he used his baton due to the “dog pile” and there were no available spots to strike at the Complainant other than his head. NE#1 also stated that spraying OC indoors would incapacitate everyone. NE#1 said strikes were a trained tactic used, “in situations where you don't have the time or ability to, to utilize other tools. Uh, I felt like this was that situation.” NE#1 said he punched the Complainant as hard as he could without injuring himself. NE#1 said punching the Complainant’s face was the “most effective spot” to gain compliance because that could potentially stun him or knock him out. NE#1 said he injured his left wrist during the struggle.

### **3. Witness Officers**

FIT interviewed WO#1 on June 20, 2023, WO#2 on June 19, 2023, and WO#3 on June 19, 2023. The witness officers’ statements were consistent with the evidence summarized above.

### **E. OPA Interview**

OPA interviewed NE#1 on August 14, 2023. NE#1’s statements were consistent with his statements in his FIT interview. NE#1 also provided the following statements.

NE#1 said, before arriving at CM#1’s apartment, an officer radioed that SWAT officers previously responded to the Complainant. NE#1 explained his punches. NE#1 said the Complainant was on his knees and attempted to stand up, so NE#1 struck his face. NE#1 said his punches were reasonable because the Complainant actively resisted and fled, creating immediate risk to officer safety when they attempted to arrest him in a stairwell. NE#1 said his punches were necessary because he believed an officer would get injured. NE#1 said the chances of injury grew “exponentially larger” as time went on. NE#1 said the Complainant, in a disadvantaged position, was “able to get one of his feet up and began to stand up,” which necessitated NE#1’s use of force to gain compliance. NE#1 said his punches were proportional because the Complainant was around six feet five inches tall and was bigger, more muscular, and “objectively stronger” than all officers. NE#1 said the Complainant pulled four officers into “cramped quarters” where officers struggled and failed to control him. NE#1 said his law enforcement objective was to arrest the Complainant



for violating a DV no contact order, but the Complainant refused to comply with officers' orders, resisted, and attempted to flee.

NE#1 said his first punch momentarily worked because it caused the Complainant to return to his knees. NE#1 said the Complainant attempted to get back up, so NE#1 punched him two more times, which dazed him for a second. NE#1 said he did not intend to break the Complainant's nose but intended to gain compliance. OPA told NE#1 that the Complainant said although he did not put his hands behind his back, he did not swing or kick at officers. NE#1 acknowledged the Complainant did not swing or kick, but he actively resisted, increasing the chances of injury. OPA also told NE#1 that the Complainant said he was punched when officers subdued him while his hands were behind his back. NE#1 said the Complainant's hands were not behind his back at the time he punched the Complainant. NE#1 said the Complainant was on his knees and attempted to stand up.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 – Allegation #1**

#### ***8.200 – Using Force, 1. Use of Force: When Authorized (Effective April 24, 2023)***

The Complainant alleged NE#1 used excessive force by punching him in the face.

Officers will only use objectively reasonable, necessary, and proportional force to the threat or urgency of the situation to achieve a law enforcement objective while protecting the life and safety of all persons. SPD Interim Policy 8.200(1) (effective April 24, 2023). The reasonableness must consider that officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, dynamic, and rapidly evolving—about the amount of force that is necessary in a particular situation. *Id.* The reasonableness inquiry in an excessive-force case is an objective one—whether the officers' actions are objectively reasonable considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary under the totality of the circumstances where “a reasonably effective alternative to the use of physical force or deadly force does not appear to exist, and the type and amount of physical force or deadly force used is a reasonable and proportional response to [e]ffect the legal purpose intended or to protect against the threat posed to the officer or others.” SPD Interim Policy 8.050 (effective April 24, 2023). A proportional use of force must “reflect the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied.” *Id.*

Here, during a hands-on struggle to arrest the Complainant, NE#1 punched the Complainant's face three times, breaking his nose. Under the totality of the circumstances, NE#1's use of force was objectively reasonable, necessary, and proportional.

First, NE#1's use of force was objectively reasonable. NE#1 knew that any interaction with the Complainant could turn violent based on information that the Complainant previously fought officers. Before officers arrived, they discussed who would use lethal force and who would use less lethal force due to the potential danger they were about to encounter. The officers also did not know whether the Complainant was armed. The Complainant, feigning compliance while approaching the officers, intended to evade arrest. The Complainant so effectively resisted four officers that he maneuvered his way through them at CM#1's door and prevented officers from handcuffing him on the stairwell landing for about two minutes. The struggle itself was so forceful that it caused two officers to lose their BWV from



their persons. Additionally, NE#1 injured his left wrist, which needed to be wrapped in an arm cast. Although four officers went hands-on to arrest the Complainant, they struggled to handcuff him because he was physically large and actively resisted. While the Complainant did not swing or kick at officers, their location posed a danger to everyone—compounded by five fully grown adults crammed on one stairwell landing. A prolonged struggle in such close quarters could easily lead to officers and the Complainant falling down the nearby stairs and getting injured. Despite the situation they were in, the Complainant expressed every intention of fleeing. The Complainant, while on the ground, appeared trying to stand up and repeatedly shouted, “I can’t go to jail!”

The Complainant also posed an immediate threat to CM#1 since he allegedly violated two no-contact orders and allegedly caused another DV incident with CM#1, who was captured on BWV exiting her apartment crying. Officers had a high public safety interest in preventing the Complainant’s escape. See RCW 10.31.100(2)(a) and (d) (requiring a mandatory arrest for a no-contact order violation or if an officer has probable cause to believe a DV offense occurred). The Complainant was adamant on fleeing despite four officers struggling to hold him down, so NE#1 punched the Complainant to “break[] down structure and gain[] compliance.” NE#1’s use of force to swiftly terminate the struggle was objectively reasonable.

Second, NE#1’s use of force was necessary. First, there was no reasonably effective alternative to the use of force. The officers were faced with a mandatory arrest, and the Complainant actively resisted and attempted to flee. NE#1 said he carried a Taser, a baton, and an OC spray, but deploying any of these less lethal tools seemed unfeasible. Another officer already had his Taser out and threatened to deploy it. NE#1 would not be able to effectively deploy a Taser or baton in such close quarters where three other officers physically struggled with the Complainant that NE#1 described as a “dog pile.” Finally, NE#1 did not want to spray his OC in such close quarters because that likely would have incapacitated everyone. Deploying any of these less lethal tools was neither feasible nor prudent due to the officers’ proximity to the Complainant during the struggle. Second, the amount of force used was also reasonable and proportional to effect the arrest and to protect against the imminent threat posed to the officers. The Complainant resisted arrest using his entire body, even with four officers on him. NE#1 said the Complainant’s face was the “most effective spot” to stun him. One punch, which “dazed [the Complainant] for a second,” was insufficient because he continued to resist, so NE#1 punched the Complainant two more times. Ultimately, NE#1’s punches appeared to have considerably slowed down the Complainant, who then sat on the landing and resisted the officers less actively. NE#1’s use of force was necessary under these circumstances.

Third, NE#1’s use of force was proportional. The Complainant refused to comply with officers’ orders at CM#1’s apartment, attempted to flee, and forced officers into an area where further injury was foreseeable. The Complainant, for about two minutes, effectively resisted handcuffing despite having four officers on him. When the Complainant resisted arrest on the stairway landing, everyone was in danger of falling down the stairs. The Complainant was so noncompliant that NE#1 employed a more direct intervention tactic to end the struggle. All officers also cited the Complainant’s large stature as a significant reason for struggling to control him. OPA finds NE#1’s use of force was proportional under these circumstances, especially considering the level of resistance and threat posed by the Complainant.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**